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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9353 OF 2018**

M/s. Gundecha Buildcon India Pvt. Ltd. .. Petitioner
vs.
Omkar Chaya Sahakari Griha Rachana
Sanstha Maryadit and ors. .. Respondents

Mr. Shriniwas Sudhir Patwardhan for the Petitioner.
Mr. S.D. Rayrikar, AGP for the State-Respondent No.4.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 5, 2021

P.C.

Heard learned counsel for the parties.

2. By this Petition filed under Article 227 of the Constitution of India, the order passed by the Competent Authority granting deemed conveyance in favour of the Respondent No.1-Society is under challenge. It is the contention of learned counsel for the Petitioner that the Competent Authority has granted an area more than what is permissible in the flat purchase agreement. It is pointed out that the maximum undivided area of land grantable is 386.12 sq.mtr. and maximum constructed portion grantable is 917 sq.mtr. whereas what has been granted is an area of land 477.34 sq. mtr and the constructed portion to the extent of 1099.58 sq.mtr. Learned counsel submits that this aspect has not been taken into consideration at all. It is his submission that the

Petitioner-Developer was to construct two wings i.e. 'A' and 'B'. So far as 'A' wing is concerned the construction is completed and 'B' wing is under construction. Even before the 'B' wing could be completed, the Respondent No.1-Society applied for deemed conveyance. It is his submission that the application is pre-mature in as much as the agreement clearly provided that unless and until the construction of the buildings is completed, there is no question of grant of any conveyance.

3. Part of the development is by the vendor of the Petitioner i.e. Respondent No.3 and later the development is done by the Petitioner. The Petitioner has also purchased development rights from M/s. Vraj Construction.

4. I have gone through the order passed by the Competent Authority. There is no dispute that so far as 'A' wing is concerned, the construction is completed. The members of Respondent No.1-Society viz. flat purchasers had entered into the flat purchase agreement with the Promoters and it is on the basis of the flat purchase agreement the application for deemed conveyance is made. The members of the Respondent No.1 formed a Society viz. Respondent No.1 registered under the Maharashtra Co-operative Societies Act, 1960. In such circumstances, if the Respondent No.1 has applied for grant of deemed conveyance in respect of the constructed portion of 'A' wing, no error can be found in the approach of the Competent Authority granting deemed

conveyance. A contention is raised by learned counsel that an area more than what the Society is entitled to has been granted. 'B' wing is under construction and yet to be completed. In any case it is well settled by the decisions rendered by this Court in the case of **Mazda Construction Company & Others Vs. Sultanabad Darshan CHS Ltd. & Others¹** and **Angeline Randolph Pareira & Ors. Vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & ors.²** that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property and to such an extent as is apprehended by the Petitioner. In that matter, it is also clarified that it was not as if such an order is passed that the Petitioners have no remedy to question the act of the Society on the strength of such deemed conveyance. The Petitioner can still bring a substantive suit on title. If a larger area is conveyed, the same can be agitated by making all such assertions and by pointing out the relevant documents and records so also by leading oral evidence in the substantive suit.

5. Hence, the following order :-

ORDER

(i) The Petitioner would be at liberty to file a substantive suit for adjudication of title in respect of the property in question. The same can be decided independently without being influenced by the fact that an order of deemed conveyance of the property in question is passed by the

¹ 2013 (2) ALL MR 278

² 2018 (6) ALL MR 729

competent authority and the certificate of title of the property is issued by the competent authority under Section 11(5) of the Maharashtra Ownership Flats (Regulation of the Promotion of Constitution, Sale Management and Transfer) Act, 1963.

(ii) Writ Petition is dismissed with the aforesaid clarification and directions.

(iii) There shall be no order as to costs.

(M.S.KARNIK, J.)

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signed by
PRADNYA
MAKARAND
BHOGALE
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